STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Harold W. Taylor :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1970 - 1972. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon Harold W. Taylor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold W. Taylor
18 Cardoza Ave.
Mohegan Lake, NY 10547

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of November, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1970 - 1972. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon Sidney Zuckerbrod the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Sidney Zuckerbrod
Sidney Zuckerbrod & Co.
58 W. 40th St.
New York, NY 10018

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
14th day of November, 1980.

Deborah A Bank

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 14, 1980

Harold W. Taylor
18 Cardoza Ave.
Mohegan Lake, NY 10547

Dear Mr. Taylor:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sidney Zuckerbrod
Sidney Zuckerbrod & Co.
58 W. 40th St.
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD W. TAYLOR	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1970, 1971 and 1972.	:	

Petitioner, Harold W. Taylor, 18 Cardoza Avenue, Mohegan Lake, New York 10547, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1970, 1971 and 1972 (File No. 14849).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 21, 1980 at 9:15 A.M. Petitioner, Harold W. Taylor, appeared with Sidney Zuckerbrod, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities during the years 1970, 1971 and 1972 is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Harold Taylor, and Elinor Taylor, his wife, filed New York State combined income tax resident returns for the years 1970, 1971 and 1972, on which net business income was reported in the amounts of $26,276.00, $10,865,00 and $6,820.00, respectively. Petitioner did not file unincorporated business tax returns for the years 1970, 1971 and 1972.

2. On February 24, 1976, the Audit Division issued a Notice of Deficiency in the sum of $3,073.31, along with an explanatory Statement of Audit Changes on which petitioner's net business income was held subject to the unincorporated business tax for the years 1970, 1971 and 1972. In addition, penalties pursuant to sections 685(a)(1), 685(a)(2) and 685(c) of the Tax Law were imposed.

3. The aforementioned Statement of Audit Changes indicated that net business income for the year 1972 was $21,135.00. This figure was actually reported as interest income on petitioner's 1972 tax return and was erroneously picked up by the Audit Division as net business income. The correct figure for net business income for the year 1972 was $6,820.00 (see Finding of Fact #1).

4. Petitioner, Harold Taylor, is a licensed real estate broker and was retained by Charles J. Bensley ("Bensley") for the purpose of leasing or selling a chain of service stations. Petitioner was required to devote his full time and efforts toward this task, so he gave up his own office and occupied an office provided by Bensley which included secretarial and telephone services.

5. Petitioner was compensated on a fixed and predetermined amount of money for his services, without consideration of the amounts received by Bensley through leases or sales contracts obtained by petitioner's efforts. All terms and conditions were dictated by Bensley and were subject to his final approval.

6. Petitioner was required to represent Bensley exclusively, and in the event a commission was earned from other sources, it was understood that it belonged to Bensley.

7. Petitioner was compensated without the withholding of payroll taxes and without reimbursement of expenses. Petitioner contributed to a retirement plan (Keogh Plan) during 1970 and paid self-employment taxes for the years 1970, 1971 and 1972.

8. Petitioner was required to report to Bensley's office and to report his daily activities and contacts.

CONCLUSIONS OF LAW

A. That sufficient direction and control was exercised by Charles J. Bensley during 1970, 1971 and 1972 so as to cause petitioner, Harold Taylor, to become his employee within the meaning and intent of section 703(b) of the Tax Law and, accordingly, the income derived therefrom is not subject to the unincorporated business tax.

B. That the petition of Harold Taylor is granted and the Notice of Deficiency issued February 24, 1976 is cnacelled.

DATED: Albany, New York
NOV 14 1980

STATE TAX COMMISSION

James LA Tullen
PRESIDENT

Arnold G. C
COMMISSIONER

Francis Q. Koenig
COMMISSIONER